

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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RICHARD ANGELO MCFEE,

Case No. 18-cv-3402 (MJD/ECW)

Plaintiff,

v.

**REPORT AND RECOMMENDATION**

WARDEN BURKHURST, CAPTAIN  
MILLER, AGENT GRIMSLEY,  
INVESTIGATOR FAIRLEY, and CASE  
MANAGER ORON,

Defendants.

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In an order dated January 30, 2019, this Court ordered Plaintiff Richard Angelo McFee to pay an initial partial filing fee of at least \$5.42. (Dkt. No. 6.) McFee was given until February 19, 2019, to pay that fee, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

That deadline has now passed, and McFee has not paid the initial partial filing fee. In fact, McFee has not communicated with the Court about this case at all since commencing this action.<sup>1</sup> Accordingly, this Court now recommends, in accordance with its prior Order, that this action be dismissed without prejudice under Rule 41(b) for

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<sup>1</sup> The Clerk's Office mailed a copy of the January 30, 2019 Order to McFee at FMC-Devens on January 31, 2019. (Dkt. No. 7.) That mailing was returned as undeliverable on February 9, 2019. (*Id.*) The Clerk's Office re-sent the Order to McFee at FMC-Lexington on February 15, 2019. (*Id.*) That second mailing has not been returned as undeliverable to the Clerk's Office.

failure to prosecute. *Henderson v. Renaissance Grand Hotel*, 267 F. App'x 496, 497 (8th Cir. 2008) (per curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

### **RECOMMENDATION**

Based upon the foregoing, and on all of the files, records, and proceedings herein,

**IT IS HEREBY RECOMMENDED** that:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 41(b) for failure to prosecute.
2. Plaintiff’s motion to proceed *in forma pauperis* (Dkt. No. 2) and motion for appointment of counsel (Dkt. No. 4) be **DENIED** as moot.

Dated: March 20, 2019

s/Elizabeth Cowan Wright  
ELIZABETH COWAN WRIGHT  
United States Magistrate Judge

### **NOTICE**

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. *See* Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).